

# HOUSE BILL REPORT

## ESHB 1933

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### As Amended by the Senate

**Title:** An act relating to the integration of shoreline management policies with the growth management act.

**Brief Description:** Declaring shoreline management act legislative intent.

**Sponsors:** By House Committee on Local Government (originally sponsored by Representatives Berkey, Kessler, Cairnes, Buck, Sullivan, Orcutt, Hatfield, Jarrett, Miloscia, Gombosky, Grant, DeBolt, Quall, Woods, Schoesler, Conway, Lovick, Clibborn, Edwards, Schindler, McCoy, Eickmeyer and Alexander).

**Brief History:**

**Committee Activity:**

Local Government: 3/3/03, 3/5/03 [DPS].

**Floor Activity:**

Passed House: 3/17/03, 66-31.

Senate Amended.

Passed Senate: 4/9/03, 45-0.

#### Brief Summary of Engrossed Substitute Bill

- Establishes that the integration of the goals and policies of the Shoreline Management Act (SMA) into the Growth Management Act (GMA) does not create an order of priority among the planning goals of the GMA.
- Makes the policies, goals, and provisions of the SMA the basis for determining compliance of a master program with the GMA.
- Specifies additional protection and statutory jurisdiction provisions for critical areas.
- Limits the master program reviewing authority of Growth Management Hearings Boards.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Romero, Chair; Schindler, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Ahern, Berkey,

Clibborn, Mielke and Moeller.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Upthegrove, Vice Chair; and Ericksen.

**Staff:** Ethan Moreno (786-7386).

**Background:**

I. SHORELINE MANAGEMENT ACT

Policy

The Shoreline Management Act (SMA) governs uses of state shorelines. The SMA enunciates state "policy" to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and creates "preference" criteria listed in the following order of priority that must be used by state and local governments in regulating shoreline uses:

- recognizing statewide interest over local interest;
- preserving natural shoreline character;
- resulting in long-term over short-term benefit;
- protecting shoreline resources and ecology;
- increasing public access to publicly owned shoreline areas;
- increasing public recreational opportunities; and
- providing for any of the mandatory elements within the local shoreline master program as delineated in RCW 90.58.100.

The SMA governs "shorelines of the state." These "shorelines of the state" are defined in the SMA to include both "shorelines" and "shorelines of statewide significance;" terms defined by statute. "Shorelines" include all water areas, including reservoirs, and their associated "shorelands" except:

- shorelines of statewide significance [separately defined to include specific shoreline areas in RCW 90.58.030(2)(e)];
- shorelines (and their wetlands) on segments of streams upstream of a point at which the mean annual flow is less than or equal to 20 cubic feet per second (cfs); and
- shorelines (and their wetlands) on lakes fewer than 20 acres in size.

"Shorelands" include the lands extending landward for 200 feet in all directions from the ordinary high water mark as well as floodways and contiguous floodplain areas landward 200 feet from the floodways. "Shorelands" also include all wetlands and river deltas associated with streams, lakes, and tidal waters subject to the SMA.

### Requirements

The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs which regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted shoreline master programs.

### Master Programs

Master programs regulate land use and activities within the shoreline jurisdiction. Local master programs have certain mandatory elements as appropriate. These include:

- an *economic development* element for locating and designing water-dependent industrial projects and other commercial activities;
- a *public access* element to provide for public access to public areas;
- a *recreational* element to preserve and enhance shoreline recreational opportunities;
- a *circulation* element to locate transportation and other public facilities for shoreline use;
- a *use* element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a *conservation* element to preserve natural resources in shoreline areas;
- a *historic, cultural, scientific, and educational* element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing *flood damage*.

Local governments may include other elements necessary to implement the SMA requirements.

### Appeals

Appeals of shoreline rules and regulations adopted by the Department of Ecology (DOE) and other specific matters are reviewed by the Shorelines Hearings Board (SHB).

For jurisdictions planning under the major Growth Management Act requirements, adoption or amendment of local master programs are appealed to the Growth Management Hearings Board (GMHB). Master programs adopted by other jurisdictions are appealed to the SHB. Certain standards are specified for appellate review of master programs. Decisions of either the SHB or the GMHB may be appealed to superior court.

## II. GROWTH MANAGEMENT ACT

### Policy

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Currently, 29 of 39 counties, and the cities within those 29 counties, are required to or have chosen to comply with the major requirements of the GMA (GMA jurisdictions).

The GMA establishes a list of 13 planning goals to be used exclusively for guiding the development and adoption of comprehensive plans and development regulations by GMA jurisdictions. The goals, which are not listed in an order of priority, include:

- encouraging *urban growth* in urban areas with adequate public facilities;
- *reducing* low-density development  *sprawl*;
- encouraging efficient, regionally coordinated  *transportation* systems;
- encouraging affordable  *housing* availability;
- encouraging  *economic development* and growth in areas with insufficient growth;
- protecting private  *property rights*;
- processing  *permits* in a timely and fair manner;
- maintaining and enhancing  *natural resource* industries;
- retaining and developing  *open space and recreation* availability and opportunities;
- protecting the  *environment* and water availability;
- encouraging  *citizen participation and coordination*;
- ensuring adequate  *public facilities and services*; and
- encouraging  *historic preservation*.

### Requirements - Comprehensive Land Use Plans

Among numerous planning requirements, GMA jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Each comprehensive plan must include the following elements:

- land use;
- housing;
- capital facilities plan;
- utilities;
- rural;
- transportation;
- economic development; and

- parks and recreation.

The economic development and parks and recreation elements do not require jurisdictional compliance or action until state funding is provided.

Comprehensive plans must also include designations of urban growth areas (UGAs) within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature.

Comprehensive land use plans and development regulations are subject to continuing review and evaluation by the adopting county or city. Any amendments or revisions of development regulations must comply with the requirements of the GMA and must be consistent with and implement comprehensive plans.

### III. POLICY INTEGRATION

In 1995 the Legislature enacted environmental regulatory reform legislation (i.e., ESHB 1724, enacted as ch. 347, Laws of 1995). As a result of the legislation, which implemented recommendations of the Governor's Task Force on Regulatory Reform, the goals and policies of the SMA were added as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a shoreline master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

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#### **Summary of Engrossed Substitute Bill:**

New policy and governance provisions are added to the GMA to specify that:

- integration of SMA goals and policies into the GMA planning goals does not create an order of priority among the planning goals;
- shoreline master programs may not be adopted pursuant to goals, policies, and other existing GMA criteria presently used for the adoption of comprehensive plans or development regulations; and
- SMA policies, goals, provisions, and applicable guidelines must, with limited exceptions, be the sole basis for determining compliance of a master program with the GMA.

Several new provisions regarding critical areas are added to the SMA and the GMA. As of the date the DOE approves a master program adopted under shoreline master program guidelines effective January 1, 2003, the protection of critical areas within shorelines of the state must be accomplished only through a shoreline master program. Critical areas subject to a master program adopted under revised guidelines are not subject to the procedural and substantive requirements of the GMA. Specified GMA provisions for designating and protecting critical areas may not apply to the adoption and amendment of

master programs and may not be used to determine compliance of a master program with the SMA and applicable guidelines. Master programs are required to provide a level of protection to critical areas within shorelines of the state that is at least equal to that provided by development regulations required by the GMA. Additionally, "shorelines of the state" are not considered critical areas under the GMA except to the extent that specific areas within shorelines of the state qualify for designation and have been designated as such by a local government. Furthermore, the definition of shorelands is amended to include additional lands necessary for critical area buffers required for compliance with master program provisions.

The existing authority of Growth Management Hearings Boards (GMHBs) to review proposed master programs or amendments for compliance with GMA provisions is limited to reviewing for compliance with specific internal consistency provisions of the GMA. The GMHBs may review proposed master programs or amendments for compliance with consistency requirements for city and county development regulations.

The DOE is required to approve the segment of a master program relating to critical areas if the segment is consistent with guidelines revised after January 1, 2003, and if the segment provides a level of protection at least equal to that of the local government's adopted and subsequently amended critical areas ordinances.

Additional legislative findings and intent are included.

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#### **EFFECT OF SENATE AMENDMENT(S):**

The SMA definition of "shorelands" is amended to allow a local jurisdiction to include specific land necessary for critical area buffers in its master program. Specific forest practices on applicable buffer lands, except as provided, are not subject to additional regulation under the SMA. Clarifies that nothing in the act is intended to affect whether or to what extent specific agricultural activities are subject to the provisions of the GMA. If a local jurisdiction's master program does not include buffers for specified critical areas, those critical areas and their required buffers will be regulated by the GMA. References to adoption, revision, and effective dates for shoreline guidelines are removed. Specific legislative intent and finding provisions are removed.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The City of Everett's amended shoreline master program is one of the

most environmentally sound programs in the state. The city spent nearly a decade and almost \$1 million preparing the plan prior to having amendments to its plan remanded by the GMHB. The Legislature has several reasons to act on this legislation, including: 1) The potential that other local governments will not update master programs; 2) the linkage between this bill and legislation establishing a schedule for master program amendments; and 3) enormous risks to development that may result without legislative clarification. This bill will restore a historic interpretation of the integration of the GMA and the SMA, correcting an erroneous interpretation by the GMHB. New guidelines for master programs will be helpful, but without legislative action, the statutory scheme analyzed by the GMHB will remain. This bill addresses issues of global concern and competitiveness. Legislative clarity is essential, as the urgency of this issue cannot wait for the judicial process to unfold. This bill, as a vehicle for clarifying the relevant issues, should move forward.

**Testimony Against:** This bill may upset the balance of the SMA and result in unintended consequences. Great concern exists about this bill, but progress among parties negotiating potential amendatory provisions continues to be made. Opposition to this bill could be reduced with very narrowly crafted language, including removal of the provisions contained within section one. The Boeing/Mukilteo project can proceed without changes to existing law.

**Testified:** Representative Berkey, prime sponsor; Larry Stout, Washington Association of Realtors; Paul Roberts, City of Everett; John Koster and Stephen Holt, Snohomish County; Kristen Sawin, Association of Washington Business; Dave Williams, Association of Washington Cities; Gordon White, Department of Ecology; and Eric Johnson, Washington Public Ports Association.

(Against) Bruce Wishart, People for Puget Sound; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Nina Carter, Audubon Society; and Tim Trohimovich, 1000 Friends of Washington.